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Earl Warren and Fence-Mending

By LYLE DENNISTON

Earl Warren, ex-governor and onetime vice presidential candidate, is *not* exactly a whistle-stopping politician any more.

But, as the nation's Chief Justice, he has been on the hustings lately, seeking a following of sorts.

His recent speechmaking gives the clear impression that the Supreme Court's most prominent member is doing some fence-mending—*not* so much for himself as for the "Warren court."

And these activities have begun to worry the traditionalists who, by their own appointment, act as guardians of the court's traditions and its prestige.

In the hallowed custom of America's highest judicial body, the justices need *not* answer publicly for what they do. Their decisions must speak for themselves. Appointed for life, the justices are restrained—it is said—only by their own sense of self-restraint.

A political following is, supposedly, beyond their furthest concern. They may read the election returns, but they do not have to follow them. The shifting dogmas of public opinion may fascinate, but need *not* influence, the court.

If the court's members step down from the heights where only abiding reason prevails, they presumably would pay too close attention to what is merely popular.

But Earl Warren has been stepping down lately. And he has been doing some things that appear quite clearly "political."

He went to the President's Crime Control Conference. Not only was he seen applauding the President's demand

for new crime legislation—new laws which could come before Warren to be judged. He also was heard saying, in a speech, that he was for the legislation.

Listeners were astonished (and, presumably, the President was delighted) when the Chief Justice urged everybody to "stick together" to get the benefits out of the proposed new laws.

If Warren was *not* making subtle apology for what the court has done lately in criminal cases, he was at least mending fences among police and prosecutors.

And just the other day, Warren turned up in Albany, N.Y., to pronounce his blessing upon the most political act the people of New York or any state may perform: Writing a new constitution.

He even gave the constitution-drafters a piece of advice on an issue already known to be in controversy among them: Keep the new constitution short.

And then the Chief Justice went on to explain why federal authority has seemed, in recent years, to be taking on so many tasks that "states righters" thought belonged to them. It was, he said, mostly by default.

If Warren was *not* explaining away the innovations his court has adopted in such fields as state legislature districting, he was at least saying the right things to an audience of state leaders.

Without doubt, Warren *not* only stepped out of judicial detachment, but also across the "separation of powers," at both of these recent events.

Socially, he does the same thing a lot. His picture appears often on the society

pages, as a dinner guest at the White House or on Embassy Row. And he has represented the President (his constitutional equal) at high government ceremonies in foreign lands.

There is *no* question but that his presence at an event lends prestige. In protocol rank, there are few standing higher than the Chief Justice of the United States.

But it is also true that his presence lends the reputation of the Supreme Court—which is, in a way, his court—to the activities in which he joins.

There was, one recalls, his service as chairman of the presidential commission investigating the Kennedy assassination. He hardly was called to that post to perform a judicial act. But he lent special respectability to an extraordinary process of fact-finding—a role, by tradition, for either the presidency or Congress.

To be sure, that sort of thing has been done before. Justice Owen Roberts stepped off the bench temporarily to lead the board of inquiry which analyzed the sneak attack on Pearl Harbor. Justice Robert H. Jackson *not* only helped set up the Nuremburg war crimes trials, but also acted as chief prosecutor of the Nazis there.

But Warren's recent out-of-court activities, while obviously nonjudicial, may be related after all to his job as Chief Justice.

He may be making friends for himself and, in turn, for his controversial tribunal. He may have accumulated something that could be spent when the political going gets rough after another decision day.